



October 28, 2002

Ms. Leah Curtis Morris
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Attorneys at Law
P. O. Box 1256
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OR2002-6066

Dear Ms. Morris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171435.

The Hunt County MHMR (the "HCMHMR"), which you represent, received a request for copies of eleven categories of information as follows:

- 1) HCMHMR's current Community MHMR Center Communications Officer/Community Relations Director;
- 2) prescribed actions for registering complaints against HCMHMR's Chief Executive Officer;
- 3) current procedures for notifying HCMHMR's board of trustees regarding litigation related to the center and the Chief Executive Officer;
- 4) location where a specified sign is posted at HCMHMR's center and the period of time in which it has been posted in that location;
- 5) center's policies and procedures pertaining to third party notification when a third party's proprietary information has been requested and the period of time in which they have been in effect;
- 6) details concerning the Training Programs funded by the most recent Telecommunications Infrastructure Fund Board ("TIFB") grant;
- 7) details regarding a specified transaction involving TIFB funds;

- 8) policies and procedures that the center has in effect for processing Open Records Act requests and the period of time in which they have been in effect;
- 9) name, position, and contact information for each current member of HCMHMR's board of trustees;
- 10) name, position, and contact information for each individual who has been a member of HCMHMR's board of trustees since January 1990; and
- 11) whether HCMHMR's board of trustees has been kept properly informed of the details regarding specified litigation and the total expenditures for legal fees regarding this litigation.

The requestor asks HCMHMR several questions in his request. We note that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). You state that information that is responsive to items 7 and 9 of the request has been made available to the requestor. You also state that HCMHMR does not maintain information that is responsive to items 1 through 6, 8, and 11 of the request.¹ You claim that the remaining requested information, or portions thereof, related to item ten of the request is excepted from disclosure pursuant to sections 552.101, 552.102, 552.103, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor and two current members of HCMHMR's board of trustees. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that HCMHMR received the written request on August 6, 2002. Therefore, HCMHMR had until August 20, 2002 to ask the attorney general for a decision as to whether any information requested in this instance could

¹ We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

be withheld from disclosure. However, HCMHMR did not request a decision from our office concerning the requested information until August 23, 2002, more than ten business days after the date that HCMHMR received the present request. Accordingly, we conclude that HCMHMR failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b).

Because HCMHMR failed to request a decision from us within ten business days of receiving the request, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). HCMHMR must demonstrate a compelling interest in order to overcome this presumption of openness. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested information implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). Although HCMHMR claims that the information at issue is excepted from disclosure in its entirety pursuant to sections 552.103 and 552.107 of the Government Code, we note that these provisions are discretionary exceptions to disclosure under the Act that do not constitute compelling interests sufficient to overcome the presumption that the requested information is now public.² Accordingly, we conclude that HCMHMR may not withhold any portion of the information at issue under sections 552.103 or 552.107 of the Government Code. However, since HCMHMR also claims that portions of the information at issue are excepted from disclosure pursuant to sections 552.101, 552.102, and 552.117 of the Government Code, we will consider those particular claims with regard to the information at issue.

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected from disclosure under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected from disclosure under the common-law right to privacy as incorporated by section 552.101 of the Government Code. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Accordingly, we address

² Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general).

HCMHMR's section 552.101 and 552.102 claims together. We note that information is protected from disclosure under the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* After carefully reviewing the information at issue, we find that no portion of this information is protected from disclosure under the common-law right to privacy. *See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow).* Accordingly, we conclude that HCMHMR may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that portions of the information at issue are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1).* However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the official or employee did not request confidentiality in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989).* Based on our review of the information at issue, we conclude that HCMHMR must withhold the information that we have marked pursuant to section 552.117(1) of the Government Code, if the current or former official to whom this information is associated requested confidentiality for this information in accordance with section 552.024 prior to HCMHMR's receipt of the present request. Otherwise, HCMHMR must release this information to the requestor. The information that we have marked constitutes a representative sample of the types of section 552.117(1) information that must be withheld, if the above conditions have been met.

In summary, HCMHMR must withhold the information that we have marked pursuant to section 552.117(1) of the Government Code, if the officials to whom this information is associated requested confidentiality for this information in accordance with section 552.024 prior to HCMHMR's receipt of the present request. HCMHMR must release the remaining information at issue to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

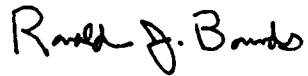
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized 'R' and 'B'.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 171435

Enc. Marked documents

c: Mr. Charles G. Galloway
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